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November 16, 2015

VIA ELECTRONIC & US MAIL

Ms. Stephanie Vaughn
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, New York 10007

**Re: Monthly Progress Report No. 38 – October 2015
Lower Passaic River Study Area (LPRSA)
River Mile 10.9 Removal Action
CERCLA Docket No. 02-2012-2015**

Dear Ms. Vaughn:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement. The CPG has revised this Progress Report to address the Region's direction in its September 1, 2015 letter.

(a) Actions which have been taken to comply with this Settlement Agreement during the previous month.

Meetings/Conference Calls

- On October 6, EPA Region 2 (Region 2) and Region 2 consultants held a conference call with CPG and CPG consultants to discuss CPG recommendations for re-location of pore water samplers in the RM 10.9 Removal Area (RA) cap.

Correspondence

- On October 10, CPG confirmed with Region 2 that it would provide oversight of the Region's October 13 sediment probing on the RM 10.9 RA cap.
- On October 12, CPG submitted coordinates and map of proposed alternative porewater sampling locations to Region 2.
- On October 15, CPG submitted the September 2015 Progress Report to Region 2.
- On October 23, CPG notified Region 2 that the one set of pore water samplers installed on August 26 would be retrieved during a lunar low tide on October 27.

Ms. S. Vaughn
RM 10.9 Removal Action - Progress Report No. 38 – October 2015
November 16, 2015
Page 2 of 4

Work

- CPG developed a set of alternative pore water sampling locations on the RM 10.9 RA cap based on land-side access during lunar low tides.
- CPG observed additional Region 2 sediment probing of the RM 10.9 RA cap conducted on October 13.
- CPG retrieved the one set of porewater samplers and a co-located surface sediment grab sample on October 27.
- CPG continued review of the 2015 RM 10.9 Post-Construction Bathymetry Survey data.
- CPG continued development of responses to Region 2 comments on the draft River Mile 10.9 Removal Action Final Construction Report.

(b) Results of Sampling and Tests

None

(c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction

- CPG will evaluate data from the pore water sampler SPME fiber analysis and sediment grab sample when received from the laboratory.
- CPG will install remaining pore water samplers pending resolution of access to alternative sampling locations and Region 2 acceptance of locations.
- CPG will complete processing of the 2015 RM 10.9 Post-Construction Bathymetry Survey data and prepare a data report.
- CPG will provide responses to Region 2 comments on the draft River Mile 10.9 Removal Action Final Construction Report to Region 2.

(d) Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays

The CPG has agreed to retain only near-term problems and concerns in the monthly reports moving forward pursuant to the direction in Region 2's September 1 letter; however, previous Progress Reports through July 2015 document in Section (d) significant issues and matters largely the result of actions and decisions by the Region that have significantly delayed and complicated the completion of the RM 10.9 Removal Action. The removal of this previous information does not in any way lessen its impact on the completion of the RM 10.9 Removal Action.

- **Post-Construction Monitoring Plan** - The CPG attempted to install pore water samplers into the RM 10.9 cap after receiving Region 2's conditional approval of the draft QAPP on August 26 -27. The combination of armor stone, geotechnical fabric and accumulated sediment prevented the successful installation of pore water samplers at

Ms. S. Vaughn

RM 10.9 Removal Action - Progress Report No. 38 – October 2015

November 16, 2015

Page 3 of 4

nine of ten locations identified in the QAPP. CPG provided recommendations to Region 2 for installation of remaining pore water samplers on September 24 which the Region rejected. CPG provided a second set of alternative pore water sampling locations to Region 2 on October 12 based on land-side access to the RM 10.9 cap during lunar low tides. Two of the three pore water samplers retrieved on October 27 were found to have been damaged during installation through the armor stone and geotextile cap layers which will impact contaminant detection levels specified in the QAPP. Agreement on remaining sampling locations and tide-controlled access to these locations may delay chemical monitoring requested by the Region.

- **Removal Action Final Construction Report** - Response to Region 2's comments on the draft River Mile 10.9 Removal Action Final Construction Report will be delayed pending resolution of the long-term cap sampling/monitoring issues and implementation of a feasible chemical monitoring method. The CPG does take exception and does not agree to the Region's comments directing the CPG to remove text related to implementability and feasibility that were included in the draft report.

Two significant issues remained unresolved and need to be satisfactorily addressed by the Region:

- **Tierra/Maxus/Occidental (TMO) UAO** - There is still no satisfactory resolution concerning the Tierra/Maxus/Occidental (TMO) participation at RM 10.9. The Region has failed to require the TMO parties to participate in a significant and substantive degree that is commensurate with their obligation. As documented in the CPG's correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action. Subsequent requirements directed by the Region such as a utility survey of the 0.5 acre no dredge zone are inconsistent with TMO's responsibility.
- **RM 10.9 Force Majeure – June 2013** - The CPG strongly disagrees with the Region's July 15, 2013 letter denying the Force Majeure condition outlined in CPG's June 29, 2013 letter. CPG addressed this issue in its July 31, 2013 letter to which the Region has never responded. EPA's rationale for denial was inconsistent with terms and definitions in the RM 10.9 AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled - were clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties failed to meet their obligations under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. As noted above it is the Counties obligation to ensure that their bridges are operable and ready to open upon notice. Finally, the CPG voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so.

Ms. S. Vaughn
RM 10.9 Removal Action - Progress Report No. 38 – October 2015
November 16, 2015
Page 4 of 4

If you have any questions, please contact Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.



Willard Potter
CPG Project Coordinator

cc: Christopher Jimenez, EPA Region 2
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